UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

K MOTORS 2, INC. D/B/A
HONDA OF EL CAJON SUPERSTORE[1]

Employer

and **Case 21-RC-260773**

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS LOCAL LODGE. 1484, DISTRICT LODGE 190

Petitioner

DECISION AND DIRECTION OF ELECTION

There are two issues presented in this case: the first is whether the petitioned-for unit, limited to employees at the Employer's Honda of El Cajon Superstore facility located at 889 Arnele Avenue, El Cajon, California, is an appropriate unit for bargaining, or whether the unit also must include employees at the Employer's adjacent facility located at Toyota of El Cajon located at 965 Arnele Avenue, El Cajon, California. The parties agree that in either event the appropriate unit should include all full-time and regular part-time service technicians, lube technicians, and pre-delivery inspection (PDI) technicians, excluding office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

The second issue is whether to conduct a manual or mail-ballot election given the current constraints of the COVID-19 pandemic.

A hearing officer of the Board held a video hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board law, I find that the petitioned-for unit is an appropriate unit. I also find that in view of all the circumstances discussed below that the election be held by mail.

THE EMPLOYER'S OPERATIONS

The two facilities at issue herein – Honda of El Cajon Superstore (Honda) and Toyota of El Cajon (Toyota) – are both engaged in the sales and service of new and used automobiles for their respective brands. There are approximately 27 employees in the petitioned-for unit at the Honda facility, and 32 additional employees in the unit proposed by the Employer to include the Toyota facility.

The two facilities are immediately adjacent to one another on Arnele Avenue in El Cajon and share a common 200-yard boundary with driveways to their respective facilities. An internal ramp was recently constructed between the two facilities to allow cars to be transported from one to the other without having to go back out into the street and make a U-turn into the adjacent driveway. This ramp had been contemplated for nearly 2 years but was not actually constructed

[1] The Employer's name appears as corrected at the hearing. Although the Union declined to enter into a stipulation regarding the Employer's correct name, it did not object to the correction.

until after a strike by the Honda technicians and the filing of the instant petition on May 22, 2020.[2] Each dealership has separate signage identifying its facility.

Both facilities are owned by brothers Greg and Gary Kaminsky, whose father Robert Kaminsky originally owned the Toyota facility. The adjacent Honda facility was acquired by the Kaminskys about 4 years ago: the prior owner of that facility, Michael Peterson, retains a 10% ownership in Honda until the end of 2020, at which point it will become wholly owned by the Kaminskys. They are held in a family trust and appear to be franchise dealerships. Toyota is incorporated as K Motors 1, and Honda was subsequently incorporated as K Motors 2: even though they remain separate corporate entities, the Kaminsky's intended goal was to have the two operations work in synch with the same processes and procedures. As discussed in more detail below, they retain separate income and accounting streams.

Both facilities are overseen by Jeremy Cadwell, the Corporate Fixed-Operations Director, who reports directly to the Kaminsky bothers regarding day-to-day operations, parts, service, body shop, and other operational issues. Cadwell has served in this position at Toyota for about 10 years, and then at Honda after it was acquired by the Kaminskys. His office is physically located at Toyota and he generally has spent about 15% of his time at the Honda facility. After a strike by Honda technicians on May 22, he began to spend more time at Honda. He spends a minimal amount of time, if any, in the Honda service area, however.

Cadwell's compensation is paid by Toyota, and then apportioned between the two franchises with 65% from Toyota and 35% from Honda: this apportionment began after Honda was acquired by the Kaminskys and Cadwell began oversight of both facilities.

Each facility has its own General Manager who reports to Cadwell. Until recently, each facility had its own resident Service Manager. After the strike by the Honda technicians in May, the Service Manager at Honda, Wayne Ferris, was terminated and Jeff Anderson, the Toyota Service Manager, became the Service Manager for both Honda and Toyota.[3] Previously, Anderson had spent 99% of his time at Toyota but since taking on Honda, his time is now split 50/50 between the two facilities.

BOARD LAW REGARDING SINGLE FACILITY UNITS

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines several factors including: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the

[2] All dates are 2020 unless indicated otherwise.

[3] The record does not specify if this is an interim assignment. Prior to this assignment, the two facilities always had their own Service Manager.

distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J &L Plate, Inc*., 310 NLRB 429 (1993).

Application of Board Law to this Case

In reaching the conclusion that a single-facility unit is appropriate, I rely on the following analysis and record evidence.

1. Central Control over Daily Operations and Labor Relations

The Board has made clear that "the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption." (citations omitted) *California Pacific Medical Center*, 357 NLRB No. 21, slip op. at 2 (2001). Thus, "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." (citations omitted) *Hilander Foods*, 348 NLRB 1200, 1203 (2006). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees' day-to-day working lives.

As noted above, Operations Director Cadwell oversees the daily operations of both facilities. However, he confirmed that the Service Managers had the independent authority to hire, fire, coach, and counsel the employees, including probationary employees, at their respective facilities without Caswell's input, and that he only got involved if there were "special issues" or if it was a long-term employee with whom he was familiar. Service Managers also independently assigned work shifts at their respective facilities. The Service Manager at Honda is also responsible for ordering Honda parts, scheduling inspections, and arranging for the repair of equipment – actions that Cadwell merely approves after the fact. Thus, Cadwell appears to exert very little control over employees' day-to-day working conditions.

Veronica Barrios is the Controller for both Toyota and Honda: her physical office is located at the Toyota facility, as is Cadwell's, but she may spend only 6 hours a week at the Honda facility. Like Cadwell, she is compensated by Toyota, and her compensation is later apportioned 65% to Toyota and 35% to Honda. The same apportionment follows for her staff, which includes a Payroll Clerk, a Warranty Administrator, and a Human Resources Manager. Controller Barrios reports directly to the Kaminsky brothers, and her business card reflects both Toyota and Honda to show that she works for both dealerships. Barrios' duties consist of preparing separate financial statements, balance sheets, and profit and loss statements for both Toyota and Honda, as well as dealing with various taxes (including sales tax, property tax, tire and battery taxes) for both Toyota and Honda. She also oversees (although does not process) payroll and monitors overtime for each facility, reviews contracts, and ensures that government postings, and business/sales licenses are properly posted at each facility. She also contracts with vendors for computer service and office supplies, and obtains separate garage liability insurance to cover, *inter alia*, the technician's tools at each facility.

There is no evidence that Barrios has the authority to hire, fire, or discipline employees at either facility: although she does "sit in" on termination meetings, she has not been personally involved in any termination of a Honda technician. She attends regular combined meetings with the sales, service, and parts managers from both Toyota and Honda: previously these meeting rotated between the two facilities but since the COVID-19 pandemic they have been held at Toyota since it has a larger meeting room. She regularly communicates with the managers at both facilities regarding expenses, contracts, and reports as described above, but does not deal directly with the technicians at either site, most of whom direct their questions and issues to either the payroll clerk or their respective Service Manager. Like Cadwell, she appears to exert little direct control over employees' daily working conditions.

Debbie Corbin, the Human Resources Manager, reports directly to Barrios and her compensation is likewise allocated between Toyota and Honda in the same proportion.[4] She provides new employee orientation sessions either in a group or individually depending on the number of hires, assisted by a Spanish-speaking employee if necessary. She attends disciplinary hearings at both facilities, although it appears she has no authority to hire, fire, or discipline employees. She distributes benefit packets, which Barrios confirmed contained the same benefits (health insurance, 401(k) plan, etc.) for both Toyota and Honda employees.[5] Likewise, the employees from both facilities attend a common open enrollment presentation for benefits.

All employees at both Toyota and Honda are covered by what appear to be similar company policies and procedures set forth in separate booklets, although the wording and order of the policies may differ in unspecified respects between the two. These policies and procedures are accessible to all employees online through a searchable program called Compli: these electronic versions of the two handbooks also appear to differ slightly in language and format online. Based on this evidence, it appears that the employees, including the technicians, at both Toyota and Honda enjoy the same benefits, and are covered by similar although apparently not identical company policies and that they are administered by a single manager.[6]

Kathleen Barrios, the payroll clerk, reports directly to the Controller and her compensation is similarly apportioned between Toyota and Honda.[7] Service technicians at both Toyota and Honda execute the same pay-plan forms that were recently revised to reflect current California State law and current minimum wage. This plan had been used for some time by Toyota service technicians but had only recently been required of Honda service technicians beginning when the Kaminsky brothers acquired the dealership in mid-2017. The service technicians' pay is calculated using this complex plan (although several Honda technicians

[4] Corbin did not testify at the hearing.

[5] Included in Corbin's recent duties are administration of the COVID-19 Program at both facilities, including ensuring compliance with twice-daily temperature-taking conducted by the receptionist and the wearing of masks or face coverings by employees at both Toyota and Honda.

[6] The Policy and Procedures Manuals for the Toyota and Honda employees were not introduced into evidence, so it is not possible to ascertain exactly how they differ.

[7] Kathleen Barrios did not testify at the hearing.

testified that they were unable to understand exactly how their pay was derived).[8] The Pay Plan for service technicians provides that their rates and bonuses will be set by their respective Service Managers, and Cadwell confirmed that this was done without his input or approval. The lube technicians at both Toyota and Honda are paid hourly and use a different form than the service technicians. The forms for each facility are identified with that facility's name and logo.

With regard to the hourly rates of pay for service technicians, however, neither Cadwell nor Controller Barrios knew if the pay rates were the same at Toyota and Honda. Cadwell confirmed that there was a "broad range" for service technicians at Honda from $16 to $28 based on individual skill and experience, and that that range was likely the same at Toyota, but no specific evidence was educed regarding the Toyota technicians. No evidence was produced regarding the pay ranges or hourly pay for either the Toyota or Honda lube technicians.

Toyota technicians[9] are paid by Toyota and Honda technicians are paid by Honda: their compensation is not apportioned between the two as is that of the managers.[10] Also, Toyota employees' payroll is processed in-house by Toyota utilizing a system called Reynolds & Reynolds (which is also used to prepare repair orders at Toyota), whereas Honda employees' payroll is outsourced to an outside vendor (ADP) and then directly deposited into their accounts by Honda.

No evidence was presented regarding how evaluations and appraisals for Honda technicians were performed and by whom, although it would appear reasonable to assume that they would be performed by the Service Manager who had the sole discretion to set the service technician's rate of pay as well as the sole authority to discipline and fire employees. Also, the discipline forms used at Toyota and Honda are not the same.

Technicians at both Toyota and Honda are primarily hired through a computer app called Hireology, which allows them to select the job and location they are interested in, and they go through a common background check. When terminated, they complete similar Final Check Acknowledgement forms except each has the logo of either Toyota or Honda at the top. The same holds for the Employee Termination Checklist for each facility. These forms are apparently similar to standard forms used at other car dealerships.

Although the technicians' uniforms for each facility is provided by the same vendor, the Toyota uniforms are red and black with the Toyota logo on the shirt, while the Honda uniforms consist of the now-familiar blue shirt with the Honda logo and dark pants.

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[8] Apparently, service technicians pay is based on a combination of "flag hours" – the amount of time allocated for a particular task – which hours are then pooled for each team and its lead and allocated equally between them. This number of hours is then multiplied by each technician's hourly rate, with production bonuses available for coming in under the allotted time. This pay methodology is the same for both the Toyota and Honda technicians.

[9] The term "technicians" without specifying service or lube technicians is meant to apply to them collectively.

[10] The sole exception to this is during the May 22 strike by Honda technicians when Toyota technicians performed some and their work and had that work charged to Honda. This will be dismissed in further detail *infra*.

While the two facilities in dispute here are all subject to essentially the same or largely similar personnel policies, employee handbooks, and benefit programs, these facilities have distinct local supervision and significant local-level autonomy. In this regard, the on-site Service Managers at each facility have the authority to hire, fire, discipline, and schedule the technicians at their respective dealership without the input or approval of the upper-level managers. Although the two facilities share common over-all management at the upper levels, it is clear that those managers do not have direct involvement or decision-making authority over the day-to-day working conditions of the service and lube technicians. In fact, until the instant organizing campaign, upper-level management spent very little time at the Honda facility. The May 22 strike appears to have precipitated the firing of the Service Manager at Honda and his duties being taken over on an interim basis by the Service Manager at Toyota, who now services both facilities. Prior to that, however, it appears clear that each facility had always had its own Service Manager with independent supervisory authority over his service technicians.

Moreover, the evidence shows that the two facilities have retained distinct terms and conditions particular to their respective dealership, such as different payroll and timekeeping systems and perhaps even different rates of pay.[11] In addition, despite the common ownership and upper-level management, the technicians at each facility are paid by their respective dealership.

Based upon the foregoing and the record as a whole, it appears that there is significant local autonomy at the Honda facility over labor relations procedures and policies and that the Service Managers at Honda have the authority to make key decisions, such as hiring, firing, discipline, and wages for the technicians at the Honda facility. This exercise of considerable control over employees' day-to-day working supports the presumption of a single-facility unit.

2. Similarity of Skills, Functions, and Working Conditions

The similarity or dissimilarity of work, qualifications, working conditions, wages and benefits between employees at the facilities the Employer contends should be in the unit has some bearing on determining the appropriateness of the single-facility unit. However, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange. See, for example, *Dattco, Inc*., 338 NLRB 49, 51 (2002) ("This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions is sufficient to rebut the presumptive appropriateness of the single-facility unit.")

The Honda facility at the time of the hearing had 16 line or service technicians, 10 lube technicians, and one PDI technician who can also do lube work. The PDI technician performs an inspection of the vehicle when it arrives from the manufacturer, inserting fuses, attaching hubcaps, and the like. PDI work was previously all done at the Toyota facility until about 10 months ago when it was relocated to Honda. As noted above, all the Honda service and lube

[11] No evidence was presented regarding the rates of pay for the Toyota technicians. The Employer asserts in its oral argument that the Petitioner did not show that the rates of pay were different, but it is not the Petitioner's burden to do so.

technicians work only on Honda vehicles. A Honda customer cannot bring a Toyota vehicle to the Honda facility for service and repair, and vice versa.

Upon arrival at the Honda facility, a customer meets with a Service Advisor who generates a repair order (RO) which is then sent to a team leader who assigns the work to his team. Each Honda Service Advisor has his own service team. Before being acquired by the Kaminsky brothers, the Honda facility had a separate cashier where the customer used to pay. This system was deemed ungainly and, after the acquisition, the Honda cashier was eliminated and the Service Advisor now handles the entire transaction, which is consistent with the system used at Toyota. Used cars, regardless of vehicle make and model, are inspected and prepared for resale at the Honda facility by a team of used-car technicians, with any overflow outsourced to an outside automotive repair company.

A body shop located in the Honda facility does car body work for both Honda and Toyota vehicles. Any additional engine or mechanical repairs on these vehicles are referred to the appropriate facility, however, under a separate repair order.

The service technicians at Honda work in individual repair bays, with each technician assigned to one lift: the lube technicians work two to each stall for efficiency. There are currently four teams of four service technicians each at Honda, each with a team leader who assigns the work on the RO prepared by that team's Service Advisor to the technicians on his team. The record provides no description of the repair shop or the procedures at Toyota except to assert that the two vehicles are "similar" in build so most of the work required is identical.[12]

Despite this assertion, the Employer concedes that the required diagnostic equipment and procedures vary. The same basic equipment is used by both Toyota and Honda technicians in their respective shops, including air wrenches, alignment machines, tire machines, and brake machines: however, some vehicle models require specific diagnostic equipment particular to that model. For example, the valves on Hondas differ from those on Toyotas and require different equipment. Honda vehicles have different torque specifications than Toyotas. The battery chargers for Hondas and Toyota function the same but using a Toyota charger on a Honda vehicle would not meet manufacturer's specification and would therefore not be covered by warranty. Equipment is not generally shared between Toyota and Honda facilities except on the rare occasions when the alignment machine at Honda was down and the Honda service technicians had to use Toyota's. Other unspecified "specialty" machines might also be rarely exchanged back and forth.

Both Toyota and Honda service technicians are cross-trained to work "bumper-to-bumper" on any given model and can fix anything mechanical on their respective vehicle lines. The same basic training is required of service technicians at both repair facilities, but Toyota service technicians are required to complete specific on-line training by the manufacturer and are also required to be certified for "Automotive Service Excellence" (ASE) by an outside agency. Such certification is encouraged but not required of Honda service technicians, who may be only

[12] No job descriptions for the service technicians at either facility were offered into evidence.

"Certified 100% Honda" through a self-study program. The electronic modules and air bags on Honda vehicles require special training and certification from Honda Manufacturing. The two dealerships also have different, albeit, unspecified, customer satisfaction requirements.

The tool policies at both Honda and Toyota are the same, with the service technicians providing most of their own tools. As much as 25% of a Honda service technician's tools may be specific to only Honda vehicles and he may share some of his tools with other service technicians on his team. All tools at both Honda and Toyota are metric but they are not comingled or shared between the two facilities. Required automotive parts are ordered, billed, and stored separately by each dealership. Honda service technicians obtain parts only from the Honda parts department and if they are not in stock, request that they be ordered. A Toyota delivery service truck delivers all the parts for both Honda and Toyota.

The lube technicians at both Honda and Toyota have the same basic duties with regard to oil changes, tires rotations, brake service and adjustment, some fluid exchanges, air and cabin air filters, and brake light bulbs. The lube technicians at Toyota can also work on recall repairs which require a certification that Honda lube technicians do not have. Lube technicians at Honda are provided with a basic tool set by the company. No job descriptions for the lube technicians at either facility were made part of this record.

Based upon the foregoing, the record evidence does not support a conclusion that employees at the two facilities in dispute share identical skills, functions or working conditions. More specifically, the service and lube technicians at Honda use different machines, tools, skills, and procedures specific to Honda vehicles. Their training and certification differ from those required of Toyota technicians. The parts they use are unique to Honda vehicles and are ordered and maintained separately from Toyota parts.

Moreover, the record evidence is sparse with regard to the duties and procedures for the Toyota technicians that the Employer seeks to include in the bargaining unit. Except for the broad assertion that their work is identical because the vehicles are "similar," there is no description of their service department, tools, or procedures. Thus, the Employer has failed to show uniformity of skills, functions, duties, training, and working conditions between the two facilities. As noted above, although this is a factor to be considered, it is not the most important factor. However, this is one more factor to support my overall conclusion that despite the geographical proximity, there is insufficient functional integration and interchange between the two facilities to rebut the presumption of a single-facility unit.

3. Functional Integration of Operations

Evidence of functional integration is crucial to the issue whether a single-facility unit is appropriate. Functional integration refers to when employees at two or more facilities are closely integrated with one another functionally notwithstanding their physical separation. *Budget Rent A Car Systems*, 337 NLRB 884 (2002). This functional integration involves employees at the various facilities participating equally and fully at various stages in the employer's operation, such that the employees constitute integral and indispensable parts of a

single work process. Id. However, an important element of functional integration is that the employees from the various facilities have frequent contact with one another. Id at 885.

The record in this case reveals minimal functional integration. As noted above, there are differences in skills, training, tools, and procedures between the two facilities. Moreover, there is little evidence of work-related contact between the technicians at Honda and the technicians at Toyota. Thus, the record fails to demonstrate that the employees employed in the facilities in dispute are part of a single work process, where work is performed at various stages on the same product at different facilities. Rather, the evidence shows that each facility performs specific work on a specific product separate and distinct from the work performed at the other, and that the work performed at Honda does not affect the work performed at Toyota and vice versa. Although the Employer asserts that the respective vehicles are "similar," this is not sufficient to demonstrate the "single work process" as described in *Budget Rent A Car, supra*. This lack of functional integration, therefore, supports finding the single-facility unit appropriate.

Furthermore, several Honda service technicians testified that they never saw service technicians from Toyota in their shop, and rarely saw them outside the shop except at a rare holiday function. There is no evidence that the technicians at Honda and Toyota share a parking lot or shuttle from a remote parking lot or have a common lunchroom or breakroom. It is not clear from the record whether they even have the same work hours or schedules. Thus, even if there were other evidence of functional integration, it would not rebut the appropriateness of the single-facility unit sought by Petitioner because of the total absence of frequent contact between employees at the two facilities.

Further evidence of the lack of integration is shown by the fact that many of the procedures in place at the Honda facility at the time of its acquisition by the Kanimsky brothers remained unchanged and were not integrated into the procedures in effect at Toyota. Each dealership retained its own Service Manager who wields considerable control over the terms and conditions of employment of their respective technicians. The Honda facility continues to maintain a separate reservation system with separate telephone lines and a separate program to track customers and generate repair orders,[13] a separate timekeeping system, a different program for producing repair orders, and different discipline forms. Each dealership continues to maintain separate business plans and a distinct identity.

Moreover, the although the two facilities use the same advertising service, there is no evidence of an integrated campaign. For example, roadside billboards advertising Toyota of El Cajon are not permitted to refer to Honda of El Cajon Superstore under the terms of the Employer's franchise agreement with Toyota. There was testimony that print media ads "emphasized joint ownership" of the two dealerships and that there was some crossover, but no examples were provided to demonstrate how this worked. The same claim was made with regard to social media postings, but again no examples were given. Television ads for the two dealerships were designed to "work in conjunction with one another," which does not necessarily

[13] Toyota uses Reynolds & Reynolds, the same system that processes the payroll for their technicians. Honda used a program called "Dealertrack" which it used before it was acquired by the Kaminsky brothers.

evidence an integrated advertising and publicity scheme that would hold these facilities out to the public as a single integrated entity.

Finally, the two dealerships use similar but distinct logos: both contain the lower-case letters "e" and "c" (presumably for El Cajon): Toyota's "e" is green, and the word "Toyota" appears beneath the two letters. Honda's "e" is blue, and the word "Honda" appears inside the "c" and the word "Superstore" appears below. Although similar in overall design, it is clear that they refer to two separate and distinct business, as evidenced by the different logos used on personnel and other forms.

Based upon the foregoing, I have concluded that the Employer has not met its burden of showing that the operations and the work performed by the technicians at the two facilities are so functionally integrated so as to rebut the presumption of a single-facility unit.

4. The Degree of Employee Interchange

Employee contact is considered to be interchange where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. However, a significant portion of the work force must be involved, and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. *New Britain Transportation Co*., 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant when during a 1-year period there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87 employees and the temporary employees were directly supervised by the terminal manager at the terminal where the work was being performed. *Dayton Transport Corp*. 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc*., 336 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. *New Britain Transportation Co*., *supra*.

Here, the record does not establish that a significant portion of the work force works between the facilities which the Employer contends must be in the unit. In this regard, I note that the record evidence shows only one isolated instance when Toyota technicians worked on Honda vehicles, and that was during the strike called by the Honda technicians on May 22, the day the instant petition was filed. On this occasion, some Honda vehicles were either transported to the Toyota facility to be serviced by Toyota technicians, or some Toyota technicians came to the Honda facility to service Hondas.[14] The record is not entirely clear how many Toyota technicians participated in this exigent situation, but it appears to be between three and five on

[14] The record does not indicate either how many vehicles or technicians were involved, not does it indicate whether both service technicians and lube technicians engaged in this one-time transfer.

each day.[15] During this time and only this time, the pay for the Toyota technicians was allocated between Toyota and Honda in proportion to the work done on each type of vehicle. The record is unclear how long this temporary arrangement lasted, but the Honda technicians announced their strike on a Friday and said they would return the following Tuesday, so this could have lasted at most 3 days. In any event, it represents a miniscule portion of the overall work performed by the Honda technicians and lasted only for a short specific period. There is no evidence of who supervised these employees during this incident, although there is some inuendo that the Honda Service Manager was fired around this time.

Aside from this recent one-time occurrence of temporary interchange between the two facilities necessitated by a work stoppage, the only other instance cited was in August or September 2019 when there was a shortage of technicians at Honda and some Toyota technicians performed the work on the used cars usually done by Honda technicians.[16] Also on rare occasions, Honda technicians went to the Toyota facility to use their tire or brake equipment or the alignment machine if theirs were not functioning, but this was alleviated by adding more machines at Honda, so this occurs very infrequently now.

With regard to permanent transfers, the Employer presented evidence of seven instances of technicians transferring between Honda and Toyota. One was a used-car technician at Toyota who moved to Honda when the used-car work was moved there about a year ago. Another began at Toyota and was promoted to a team leader at Honda a few years ago. Three lube technicians transferred from Toyota to Honda: the first about a year and a half ago because of a shortage of lube technicians at Honda; the second about a year ago also because of a shortage at Honda but he returned to Toyota some unspecified time later; and the third recently based on a combination of cutbacks due to the COVID-19 pandemic and the strike at Honda who also subsequently returned to Toyota.

The final two transfers involved two Service Advisors who moved from Toyota to Honda, one of whom returned to Toyota shortly thereafter. This is neither statistically nor legally relevant, since Service Advisors are not part of either bargaining unit. All of these transfers were voluntary and requested by the employee.

Based upon the foregoing, I find that the interchange between the two facilities is *de minimis* and infrequent and was largely precipitated by a one-time work stoppage and therefore does not involve a significant portion of the workforce over a sustained period of time. Considering the few permanent transfers within the past few years, it is unclear how the total amount of this interchange compares with the total amount of work performed, and therefore the Employer has failed to meet its burden with respect to this factor.

[15] This would represent, at most, about one-sixth of the technicians at Toyota.

[16] Again, the record does not describe how many technicians engaged in this limited interchange or how long it lasted. Inasmuch as the work was returned to Honda at some point, it may be assumed that this transfer was limited.

5. Distance between Locations

While significant geographic distance between locations is normally a factor in favor of a single-facility unit, it is less of a factor when there is evidence of regular interchange between the locations, and when there is evidence of centralized control over daily operations and labor relations with little or no local autonomy, particularly when employees at the facilities otherwise share skills duties, and other terms and conditions of employment, as well as are in contact with one another. *Trane*, supra at 868; *Jerry's Chevrolet, Cadillac Inc.,* 344 NLRB 689 (2005).

As described above, there is no significant geographic distance between the facilities in dispute in this matter because they are immediately adjacent to one another and share a common boundary. In view of my conclusions regarding the first three factors, I conclude that the veritable absence of distance between locations does not outweigh the evidence that there is insufficient centralized control over labor relations, dissimilar skills and working conditions, little functional integration, and little meaningful interchange to rebut the presumption of a single-facility unit.

The Employer cites *Jerry's Chevrolet, supra*, to support its argument for a multi-facility unit based, in part, on the Board's emphasis on geography over other factors to find that four neighboring dealerships should all be part of the same unit. In that case, the Regional Director had found that the significance of the adjacency of the four facilities was diminished by the minimal amount of interchange between them. The Board, while acknowledging the lack of meaningful interchange, concluded that this missing factor was overcome by the close proximity of the facilities and the centralization of labor relations and the high level of functional integration.[17] *Supra* at 690.

Even accepting the foregoing proposition enunciated by the Board favoring the importance of proximity over other factors, the instant case fails to show evidence of any of the other accompanying relevant factors relied on in *Jerry's, supra*, to support a finding of a single cohesive operation. For example, the four dealerships at issue in Jerry's, although separately incorporated, held themselves out to the public as "Jerry's Family of Dealerships." A central office handling payroll, human resources, and billing was located at one of the dealerships, and all four facilities shared the same telephone system, computer system, job descriptions, and employment applications. All cars were dropped off by customers at one facility and were then delivered to the appropriate dealership for service and all four dealerships shared a common parts facility under the auspices of a single parts manager. Also, there was one common used-car lot for all four dealerships. Although each of the four dealerships at issue in *Jerry's* had its own service manager who reported to the president of the companies, these managers did not have any independent supervisory authority and could not hire, fire, or discipline workers at their respective facilities. Also, the service technicians at each of Jerry's four dealerships could work on other makes of vehicles. All of these factors combined to show a high level of integration that could mitigate the lack of interchange while emphasizing the importance of proximity.

[17] In *Jerry's*, three of the four dealerships at issue were within 1000 feet of one another, and the fourth was across the street.

In contrast to *Jerry's*, the Toyota and Honda dealerships at issue herein maintain their distinct identities and there is nothing in their advertising or business development plans that identifies them as being owned and/or operated by the same family. Although there is a central human resources office, the two dealerships do not share common telephone or computer systems or even the same scheduling software. Each dealership can take delivery of only its own brand of vehicle, and parts are separately order and stored rather than comingled. Although the used cars were mainly serviced at Honda, they were displayed on separate lots at their respective dealerships. Most importantly, the Service Managers at the Toyota and Honda facility had and exercised independent supervisory authority over their respective service and lube technicians, including the ability to hire, file, discipline, and set wages, and therefore there is strong evidence of local autonomy. Thus, unlike the four dealerships in *Jerry's, supra*, the Toyota and Honda facilities at issue herein have not been effectively merged or so functionally integrated so as to have lost their separate identity and become effectively a single facility.[18]

Thus, I find that the lack of functional integration, centralized supervision, different skills and training, and paucity of interchange between the two facilities herein is sufficient to mitigate the factor of close proximity and therefore the single-facility presumption has not been rebutted.

*6. **Bargaining History***

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate. *Trane*, supra at 868, fn. 4. Thus, the fact that there is no bargaining history in this matter does not support nor does it negate the appropriateness of the unit sought by Petitioner.

CONDUCTING THE ELECTION MANUALLY OR BY MAIL BALLOT

At the hearing, the Employer took the position that a manual, on-site election would be the most appropriate manner to conduct the election, while the Petitioner contended that a mail ballot election was necessary in light of the current pandemic restraints.[19] The hearing officer properly concluded that the determination of the method of the election, like the date and place of an election, were matters for administrative decision by the Regional Director. *Manchester Knitted Fashions,* 108 NLRB 1366 (1954)*; Halliburton Services,* 265 NLRB 1154 (1982)*; Odibrecht Contractor of Florida,* 326 NLRB 33 (1998)*;* and *CEVA Logistics U.S. Inc.,* 357 NLRB No. 60 (2011). Accordingly, the hearing officer permitted the parties to provide their positions solely to assist the Regional Director in making this determination. Based on the entire record in this proceeding, relevant Board law, and the extraordinary circumstances of a

[18] The Employer also cites *Exemplar, Inc*., 363 NLRB No. 157 (2016) to support its argument for a multi-facility unit. In that case involving janitors at two adjacent office buildings, the Board found that lack of functional integration and employee interchange was only one factor that disfavored a finding of a multi-facility unit, and that it was outweighed by numerous other factors, including the highly centralized management, lack of on-site managers, and similar skills and training. 363 NLRB at p.5. This case is also readily distinguishable from the instant case in that none of those "numerous other factors" are present.

[19] The Union clarified that although it preferred a mail ballot election under the circumstances, it would not object to a manual ballot if all necessary precautions were taken and it could be done safely and expeditiously.

pandemic, for the reasons described more fully below, I shall direct a mail ballot election commencing on the earliest practicable date.

The impact of the COVID-19 pandemic on daily life has been profound and well-documented. As of June 23, 2020,[20] over 2,302,288 people in the United States have been infected with COVID-19 and over 120,333 people have died from it.[21] The Centers for Disease Control and Prevention (CDC) has determined that the best way to prevent the illness is to avoid being exposed to the virus.[22] Many of the measures recommended by the Federal and state governments to prevent the spread of the virus are well-known at this point: maintain a 6-foot distance between individuals, work or engage in schooling from home, avoid large social gatherings, avoid discretionary travel, and practice good hygiene. *The President's Coronavirus Guidelines for America*;[23] CDC, *How to Protect Yourself and Others*.[24]

The CDC has issued specific guidance on the conducting of elections, *Recommendations for Election Polling Locations*[25] (CDC Election Guidance), many of which are applicable here. These recommendations, recently updated on June 22, 2020, describe procedures to protect both voters and poll workers, including offering alternatives to in-person voting, including voting by mail ballot if allowed in the jurisdiction, to minimize direct contact with other people and reduce crowd size at polling stations,

Many state and municipal governments have also issued restrictions responsive to the COVID-19 pandemic tailored to the particular circumstances present in specific communities. On March 19, the Governor of the State of California (Governor) issued Executive Order N-33-20 ordering all individuals living in the State of California (California) to stay home, except as to maintain continuity of operations of the Federal Critical Infrastructure Sectors.

On May 4, the Governor issued a press release announcing that based on California's progress in meeting metrics tied to indicators, California could begin to move into Stage 2 of modifying Executive Order N-33-20 on May 8, with guidelines released on May 7. In doing so, the Governor noted that the situation is "still dangerous and poses a significant public health risk." The Governor further announced that while California will be moving from Stage 1 to Stage 2, its "counties can choose to continue more restrictive measures in place based on their local conditions, and the state expects some counties to keep their more robust stay at home orders in place beyond May 8, 2020." *Id.*

On May 8, shortly after commencing Stage 2 with the limited reopening of public spaces, restaurants, and other lower-risk workplaces under certain restrictions, the California Department

[20] Again, all dates hereafter are in 2020 unless otherwise indicated.

[21] See https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

[22] See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.

[23] See https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/.

[24] See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.

[25] See https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html.

of Public Health (CDPH) and CAL OSHA created a General Checklist For Limited Services, which provided operational guidelines for certain industries, including auto repair shops. This checklist instructed auto repair shops to provide for the drop-off and pick-up of vehicles after hours using a drop box to limit personal contact between employees and customers, and further provided that repair shops communicate with customers by text, telephone, or e-mail to further limit unnecessary contact.[26]

In late-May, the Governor began to slowly roll out Stage 3 of the reopening, issuing revised industry guidelines on June 5 for the limited opening of hair salons, barber shops, in-store retail, and movie theatres, subject to county health and safety rules.[27]

On June 18, however, in response to a single-day high in increases of COVID-19, the Governor, under the auspices of the CDPH, issued the following: [28]

GUIDANCE FOR THE USE OF FACE COVERINGS

> Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.
>
> Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.
>
> This document updates existing CDPH guidance for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

Also on June 18, in San Diego County, where El Cajon Honda is located, issued an updated Public Health Order reiterating, *inter alia*, that all persons remain at home except employees or customers traveling to and from essential businesses, reopened businesses, or essential activities or to participate in individual or family outdoor activity as allowed by the County. This Order further provided, in accordance with the Governor's directive of the same date, that all persons over 2 years of age shall wear a face covering in public and observe established distancing and sanitation protocols. In addition, reopening low-risk workplaces had to post and distribute a Safe Reopening Plan describing the steps taken to comply with the

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[26] See generally https://covid19.ca.gov > roadmap.

[27] See generally https://covid19.ca.gov.

[28] As of June 23, California had 183,073 cases of COVID-19 and 5580 deaths. See www.gov.ca.gov COVID-19 Updates.

County's directives.[29] San Diego County currently has 11,000 cases of COVID-19 and saw 302 new cases on June 22.

On June 24, the Governor held a press conference to announce that new COVID-19 cases in California had risen 69% in just 2 days, and that he was considering reverting back to more stringent restrictions to slow the rampant spread of the virus.

The Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail ballot election would normally be appropriate. In *San Diego Gas & Electric*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

I find that the COVID-19 pandemic presents an extraordinary circumstance that makes conducting a mail ballot election the most responsible and appropriate method at this time for conducting a secret-ballot election to determine the unit employees' preferences for union representation. In finding that a mail-ballot election is warranted in this case, I rely on the extraordinary federal, state, and local government directives regarding the COVID-19 pandemic, and in particular the documented evidence that cases in California and in San Diego County are increasing.

Thus, the safety of the voters, observers, party representatives, and the Board agent conducting the election must be considered in determining the appropriate method for conducting the election.

In support of its argument for a manual election, the Employer asserts that it will adhere to State guidelines and regulations, including social distancing and face coverings for all parties, and provide a well-ventilated room at the Toyota facility.[30] The Employer states that people, including voters, can enter this meeting room, which measures approximately 60 feet by 60 feet, from outside by a separate hallway. The Employer further asserted that it could provide plexiglass shields between the observers and voters and between the observers and the Board agent, and also stated that it would ensure that employees would wear Company-provided gloves and face coverings during the day, and that their temperatures would be taken when they arrive

[29] www.sandiegocounty.gov coronavirus.

[30] The Employer's proposal to have the election in the larger meeting room at the Toyota facility rather than at the Honda facility was rejected by the Petitioner, who proposed in the alternative that the eligible employees vote at the nearby Union hall.

at work.[31] The Employer further proposes a 4-hour polling time to allow for the eligible voters to be individually released to avoid crowding the polling place.[32]

I find that the manual election arrangements described by the Employer to ameliorate concerns about possible exposure and infection of the parties are not adequate to ensure the safety of the parties. Manual elections by their very nature require substantial interaction between the parties involved.

In this regard, the 4-hour polling period extends the time the Board agent and the observers spend together, which is in direct contravention to the State and County's directions that prolonged contact with others in an enclosed space be limited. Moreover, the suggested arrangements do not provide accommodations for holding the pre-election conference, which would presumably involve meeting with more parties in an enclosed area, including the review of the voter list and the parties' inspection of the voting area. Even if the voters are not permitted to congregate in the room, the Board agent must retain close contact with the observers as they check off voters, as well as maintaining personal contact with the ballots and challenged ballots. There is no provision for sanitizing the election booths between each voter, or any description of bathroom facilities available for the Board agent and the observers. Moreover, the ballots must be counted at the end of the election, requiring the Board agent having to touch each one in the presence of the observers, party representatives, and other employees who wish to observe the count.

Thus, even if all the accommodations offered by the Employer were effectuated, including the proposed social distancing and other protective measures, the substantial interaction required in conducting a manual election over an extended period of time poses a substantial risk for all participants. Also, despite these proposed measures, the Employer cannot ensure its employees' compliance outside the polling area and, despite the asserted daily taking of employees' temperature to identify those who may be symptomatic of theCOVID-19 virus, any election participant could be an asymptomatic carrier of the virus. Moreover, an infected eligible voter would not be able to participate in the election, and there is no absentee or remote option for them to vote under the Board's manual election rules.[33] A mail-ballot alleviates both these potential issues.

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[31] The Employer introduced into evidence an e-mail dated May 22 containing the employees' unconditional offer return to work after their strike that stated that the technicians were engaging in a work stoppage due, in part, to the Employer's non-compliance with COVID-19 guidelines and failure to provide them with gloves or hand sanitizers, thereby risking the workers' health and safety. This unrebutted evidence would suggest that the Employer has not always enforced these guidelines and poses the legitimate question of whether the workforce may already be compromised.

[32] The Petitioner objected to the Employer's proposal to release the voters individually, arguing that they should be permitted to vote (or presumably not vote) when they chose.

[33] This same issue could also occur where an employee or employees have been exposed to a someone who has been infected by the COVID-19 virus and must self-quarantine for the requisite 14-day period, resulting in potential further disenfranchisement.

Based upon all the foregoing reasons, I have determined that, under the current circumstances, conducting a mail ballot election is consistent with current State, Federal, and Local guidelines regarding social distancing and avoiding prolonged contact with others in a closed space where people touch the same objects. Moreover, CDC guidelines specifically address the risks inherent in conducting in-person voting during the COVID-19 pandemic and encourage, where possible, alternate methods including mail ballots.

Thus, in accordance with the Board's duty under Section 9(a) of the Act to conduct secret-ballot elections to determine employee's preference for union representation, I am directing an election in the matter as soon as practicable, and, for the reasons set forth above, I am directing a mail ballot election to provide certainty of process and procedure to conduct the election within a reasonably prompt time and in a safe and responsible manner. [34]

CONCLUSION

In determining that the single-facility unit sought by Petitioner is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-facility unit is appropriate. In particular, I rely on the lack of functional integration; the extent of local autonomy with regard to hiring, firing, discipline and scheduling of technicians; the differences in skills, training, and tools; and the lack of interchange between employees.

I further conclude that under the extraordinary circumstances described above, the election will be held by mail-ballot.

Therefore, based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[35]

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[34] Recently the Board has denied review of several mail ballot elections ordered by Regional Directors under the current COVID-19 circumstances, citing the State, Federal, and local directives and the current pandemic conditions in the local area as evidence that the Regional Director did not abuse his or her discretion. See, for example, *TDS Metrocom LLC*, 18-RC-260318 (Unpublished June 23, 2020); *Vistar Transportation, LLC*, 09-RC-260125 (Unpublished June 12, 2020); and *Roseland Community Hospital*, 13-RC-256995 (Unpublished May 26, 2020). Although the Region's mandatory telework provisions in effect at the relevant time of these decisions are now voluntary, this does not change my reasoning based on the factors set forth above.

[35] At the hearing, the Employer stated that during the past calendar year, or a representative period, the Employer, in conducting its business operations, derived gross revenues in excess of $500,000, and during that same representative period, purchased and received, at its El Cajon, California facility, goods valued in excess of $5,000 directly from suppliers located outside of the state of California. The Union declined to enter into a stipulation at the hearing but stated that it had no objection.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act (the Unit):

> **Included**: All full-time and regular part-time service technicians, lube technicians, and PDI technicians employed by the Employer at its facility currently located at 889 Arnele Avenue, El Cajon, California.
>
> **Excluded**: All office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 27 employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 1484, DISTRICT LODGE 190, AFL-CIO.

A. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit **at 2:30 p.m. on Wednesday, July 8, 2020.** Ballots will be mailed to voters by the National Labor Relations Board, Region 21. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail **by Wednesday, July 15, 2020,** as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 21 Office at (213) 894-5254 or our national toll-free line at (844) 762-NLRB (844) 762-6572).

The ballots will be commingled and counted by the San Diego Resident Office of the National Labor Relations Board, Region 21 **at 10:00 a.m. on Thursday, July 30, 2020.** In order to be valid and counted, the returned ballots must be received at the San Diego Resident Office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a

meeting invitation for the videoconference will be sent to the parties' representatives prior to the count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **June 15, 2020,** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, July 2, 2020.** The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**[36]

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

[36] At the hearing, the Union waived the 10-day requirement for the voter list.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional

Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: June 30, 2020

William B. Cowen, Regional Director
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